

ORIGINAL



0000127321

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

2011 JUL -1 P 1:44

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL - 1 2011

DOCKETED BY

*[Signature]*

IN THE MATTER OF:

GEORGE BIEN-WILLNER, for  
GLENDALE & 27<sup>TH</sup> INVESTMENTS, LLC

COMPLAINANT,

v.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-10-0200

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On May 17, 2010, George Bien-Willner, for Glendale & 27<sup>th</sup> Investments, LLC ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Qwest Corporation ("Qwest"). The Complaint alleges that Qwest has incorrectly billed Complainant, who owns and operates Sterling International Hotel, for a 1-800 line that should have terminated in 2004. Complainant requests relief in the amount of approximately \$10,000.

On June 10, 2010, Qwest filed an Answer to the Complaint, denying the allegations alleged in the Complaint. Qwest's Answer states that as a gesture of goodwill, and not as an admission of liability, Qwest provided Complainant a back credit to July 2009 and Qwest requests that the Commission dismiss the Complaint.

On August 16, 2010, by Procedural Order, Qwest's Motion to Dismiss was denied and a procedural conference was set for September 8, 2010.

On August 20, 2010, Complainant filed a letter requesting that the procedural conference scheduled for September 8, 2010, be rescheduled for early October, due to a conflict in Complainant's business schedule.

1 On August 26, 2010, Qwest filed a response to Complainant's request for a continuance of the  
2 procedural conference. Qwest stated that it had no objection to the continuance and requested to  
3 appear telephonically if the newly scheduled date conflicted with Qwest counsel's travel schedule.

4 On August 27, 2010, a Procedural Order was issued continuing the procedural conference to  
5 October 7, 2010, and Qwest's request to appear telephonically was granted.

6 On October 7, 2010, the procedural conference was held as scheduled. Qwest appeared  
7 through counsel and Complainant appeared on his own behalf. During the procedural conference, the  
8 parties requested that Staff conduct an informal mediation to provide clarification on the issues  
9 involved in the Complaint and to see if settlement of the issues was possible.

10 By Procedural Order dated November 4, 2010, Staff was directed to engage in an informal  
11 mediation with the parties in an effort to clarify the issues involved in the Complaint and to determine  
12 if settlement of the issues is possible.

13 On December 7, 2010, Staff filed a Motion to Forego Staff Participation in Informal  
14 Mediation. Staff stated it has reviewed the issues in this matter during the informal complaint  
15 proceeding. Staff explained that during the informal process Staff acts as a mediator and the process  
16 allows complainants who are unfamiliar with Commission proceedings to attempt to resolve their  
17 issues in a more relaxed setting. Staff stated that both Complainant and Qwest are familiar with  
18 Commission proceedings and to conduct additional informal proceedings is unnecessary. Staff  
19 stated that re-examining the issues at the informal complaint level would be an inefficient use of  
20 Staff's limited resources and that this matter should continue as a Formal Complaint.

21 On December 10, 2010, the Complainant filed a Response to Staff's Motion ("Response").  
22 Complainant stated that under A.A.C. R14-2-510, Complainant is entitled to participate in the  
23 informal complaint process.

24 On January 5, 2011, Staff filed its Reply in Support of Staff's Motion ("Reply"). In the Reply,  
25 Staff reasserted its position that the matter should proceed through the Formal Complaint process.  
26 Staff stated that Complainant will be afforded due process through the Formal Complaint proceeding.

27 On February 15, 2011, Complainant filed a letter requesting immediate assistance in  
28 addressing the issues raised in this docket. Complainant's letter further stated that Complainant

1 believes that this matter has been unjustly delayed to the benefit of Qwest.

2       On February 17, 2011, a Procedural Order was issued granting Staff's Motion. The  
3 Procedural Order also scheduled the hearing in this matter to commence on May 2, 2011, and  
4 deadlines were established for filing testimony and responsive testimony.

5       On March 3, 2011, Complainant filed Discovery Interrogatories and a Request for Production.

6       On March 17, 2011, Complainant filed a witness list. On the same day, Complainant  
7 docketed a response to Qwest's letter of inquiry dated March 14, 2011.

8       On April 1, 2011, Qwest filed a Motion for an Order Revising the Procedural Schedule, and  
9 Compelling Complainant to Comply ("Motion"). Qwest's Motion states that Complainant has failed  
10 to file written testimony as directed by the Procedural Order issued on February 17, 2011, and that  
11 without written testimony Qwest is unable to prepare its responsive testimony. Qwest requests that  
12 the Complainant be directed to provide written testimony prepared by each of Complainant's  
13 witnesses; and that the procedural schedule be revised to allow Complainant to file written testimony  
14 and Qwest to file responsive testimony. Qwest further requests that Complainant be admonished for  
15 failing to comply with the Procedural Order and that Complainant be informed that future failure to  
16 comply could result in dismissal of the Complaint.

17       On April 13, 2011, by Procedural Order, Qwest's Motion was granted. The Complainant was  
18 again directed to file written testimony for its witness(s) with a new deadline of May 10, 2011.  
19 Complainant was put on notice that the failure to file written testimony and to abide by the procedural  
20 deadlines established in the Procedural Order could result in the dismissal of the Complaint.

21       On May 11, 2011, Complainant filed a witness list naming two witnesses and including one  
22 sentence describing each witness' testimony.

23       On May 23, 2011, Qwest filed a Motion to Dismiss ("MTD"). The MTD states that based on  
24 Complainant's failure to file written testimony and associated exhibits as twice directed by  
25 Procedural Order, the Complaint should be dismissed. The MTD further states that Complainant's  
26 vague descriptions do not articulate facts that would tend to support the Complaint, that they lack any  
27 specific allegation of wrongful acts committed by Qwest or any allegations of resulting harm for  
28 which the Commission might provide redress. The MTD states that Complainant's witnesses will

1 testify about billing issues and inaccurate account billings, but does not provide basic facts  
2 surrounding the Complaint, such as telephone services involved, the time periods, the account  
3 numbers, or the charges disputed. Qwest further states that Complainant's summary of testimony  
4 raises new issues not alleged in the Complaint. Based on the lack of information provided by  
5 Complainant, Qwest states it cannot reasonably prepare for hearing, or prepare written testimony in  
6 its defense. Therefore, Qwest requests that the Complaint be dismissed.

7       On June 1, 2011, Complainant filed a Response to Qwest's Motion to Dismiss and Motion to  
8 Compel Discovery Responses. Complainant's response states that Complainant filed a half-page  
9 Complaint; Complainant has requested (on March 3) discovery from Qwest and has not received the  
10 discovery; Complainant believes that Qwest's insistence on detailed, advance written testimony and  
11 exhibits will have little impact on the outcome of the case; and that Complainant has failed to provide  
12 exhibits and other information because Qwest has not responded to its discovery requests.  
13 Complainant request that the Commission order Qwest to respond to the discovery requests.  
14 Complainant's response states that imposing a requirement to file written testimony and exhibits is  
15 unwarranted and unjust, and in conflict with Commission rules. Complainant requests that Qwest's  
16 MTD be denied.

17       On June 7, 2011, Qwest filed a Reply in Support of its Motion to Dismiss and Response to  
18 Complainant's Motion to Compel Discovery. Qwest reiterated its assertion that the Complaint  
19 should be dismissed based on Complainant's repeated failure to file written testimony; that  
20 Complainant's generalized and unsupported allegations may lead to issues outside of the scope of the  
21 Complaint Bieng raised during the hearing; that Complainant never served its (March 3) discovery  
22 request on Qwest but instead filed it in the docket; and that Complainant did not raise the issue as to  
23 the March 3 discovery with Qwest until Complainant filed its response. Qwest requests that if the  
24 Complaint is not dismissed, that the Commission alternatively grant it time to respond or object to the  
25 March 3 discovery request.

26       Complainant has failed to comply with the orders set forth in the February 17, 2011, and the  
27 April 13, 2011, Procedural Orders which directed the filing of written testimony and associated  
28 exhibits in this proceeding. This proceeding cannot move forward until Complainant and any

1 witnesses the Complainant will have testify at hearing files detailed testimony and associated exhibits  
2 related to the specific testimony. Therefore, the hearing scheduled for July 11, 2011, should be  
3 converted to a Procedural Conference at which discussions will be held regarding the procedural  
4 posture of this proceeding and the resolution of the pending motions.

5 IT IS THEREFORE ORDERED that **Mr. Bien-Willner and Qwest shall appear for a**  
6 **Procedural Conference to discuss the procedural posture of this proceeding and the resolution**  
7 **of the pending motions on July 11, 2011, at 10:00 a.m., at the Commission's offices, 1200 West**  
8 **Washington Street, Room 100, Phoenix, Arizona.**

9 IT IS FURTHER ORDERED that **Mr. Bien-Willner's failure to attend the July 11, 2011,**  
10 **Procedural Conference may result in the granting of Qwest's Motion to Dismiss the Complaint.**

11 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
12 Communications) applies to this proceeding.

13 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
14 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (Arizona Supreme  
15 Court Rule 42). Representation before the Commission includes the obligation to appear at all  
16 hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled  
17 for discussion, unless counsel has previously been granted permission to withdraw by the  
18 Administrative Law Judge or the Commission.

19 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
20 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
21 hearing.

22 DATED this 18<sup>th</sup> day of July, 2011.

23  
24  
25  
26  
27  
28  
  
YVETTE B. KINSEY  
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 1<sup>st</sup> day of July, 2011, to:


3 George Bien-Willner  
4 GLENDALE & 27<sup>TH</sup> INVESTMENTS, LLC  
3641 North 39<sup>th</sup> Avenue  
Phoenix, AZ 85019-3601

5 Norman G. Curtright, Corporate Counsel  
6 QWEST CORPORATION  
20 East Thomas Road, 1<sup>st</sup> Floor  
Phoenix, AZ 85012-3114

7 Janice Alward, Chief Counsel  
8 Legal Division  
9 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

10 Steven M. Olea, Director  
11 Utilities Division  
12 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

13 ARIZONA REPORTING SERVICE, INC.  
14 2200 North Central Avenue, Suite 502  
Phoenix, AZ 85004-1481

15  
16 By:   
17 Debra Broyles  
Secretary to Yvette B. Kinsey